



**CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
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## Memorandum

**To:** Planning Commission  
**From:** Fern Nueno, Associate Planner  
**Date:** December 5, 2012  
**Re:** Goldenrod Variance (PA2012-126) – Agenda Item 2

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Please see the attached revised draft resolution (Attachment No. PC 1 to the staff report). Staff amended the resolution in order to clarify the action and delete an unnecessary condition of approval. The changes are shown as underline/strikeout and are within Section 1 (Page 1), Section 4 (Page 6), and Condition No. 6 (Page 7).

RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING VARIANCE NO. VA2012-006 FOR AN ENCROACHMENT INTO THE REAR SETBACK, AN INCREASE IN FLOOR AREA LIMIT, AND EXECPTIONS FROM THE THIRD FLOOR LIMITATIONS ASSOCIATED WITH THE CONSTRUCTION OF A NEW SINGLE-UNIT DWELLING LOCATED AT 211 GOLDENROD AVENUE (PA2012-126)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Annette Wiley, with respect to property located at 211 Goldenrod Avenue, and legally described as the southeasterly ½ of Lot 1, Block 133, Re-subdivision of Corona del Mar, requesting approval of a variance.
2. The applicant proposes to construct a new single-unit dwelling with a two-car garage on a sub-standard size lot. The applicant is requesting a variance to encroach 5 feet into the required 10-foot rear setback, to exceed the maximum allowed floor area limit for the property (1,404 square feet) by 444 square feet, and to deviate from the third floor size and location limitations. The third floor would exceed the maximum floor area of (187 square feet) by 33 square feet. and would be located closer than 15 feet to the front setback line. The third floor would be located 6 feet 4 inches from the front setback line, where 15 feet is required, for a total of 16 feet 4 inches from the front property line.
3. The subject property is located within the Single-Unit Residential (R-1) Zoning District and the General Plan Land Use Element category is Single-Unit Residential (RS-D).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached (RSD-B).
5. A public hearing was held on December 6, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place, and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under Section 15303, of the California Environmental Quality Act ("CEQA") Guidelines - Class 3 (New Construction or Conversion of Small Structures).

2. Class 3 allows for the construction of new, small structures, including one single-unit residence in a residential zone. In this case, an existing single-unit dwelling would be demolished and a new single-unit dwelling would be constructed on the lot located within the Single-Unit Residential Zoning District.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.090 of the Newport Beach Municipal Code, the following findings for approval of a variance and facts in support of such findings are set forth:

#### Finding:

- A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

#### Facts in Support of Finding:

- A-1. The subject lot is a half lot measuring 30 feet by 59 feet, totaling 1,770 square feet in area. The surrounding typical lots in Corona del Mar are 30 feet by 118 feet, totaling 3,540 square feet in area. The lot depth, lot size, and buildable area of the subject property are significantly smaller than that of typical lots in the area.
- A-2. The typical lots in Corona del Mar maintain alley access and are subject to a 5-foot rear alley setback. In this case, the subject property is sub-standard in size and lacks alley access as a result of a prior re-subdivision, resulting in a 10-foot required rear setback and a proportionately smaller buildable area compared with the typical lots in the area.

#### Finding:

- B. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

#### Facts in Support of Finding:

- B-1. Applying standard setbacks to the subject property results in a smaller buildable area and floor area ratio ("FAR") than for typical lots in Corona del Mar. Additionally, the rear property line is not adjacent to an alley as with most typical lots within the vicinity and throughout Corona del Mar; therefore, the required rear yard setback is 10 feet instead of the typical 5-foot alley setback. This is an unusually large setback for not only the subject property, but for a typical lot within the vicinity. Strict application of these default setbacks results in a buildable area that is 53 percent of the total lot area, while the buildable area of the larger, typical lot with a 10-foot front setback equates to 70 percent of the total lot area.

- B-2. Strict application of the Zoning Code required floor area limit ("FAL") to the subject site allows a maximum area of 1,404 gross square feet, which results in an FAR of 0.79. The allowed FAR of a typical lot with a 10-foot front setback located within the Single-Unit Residential Zoning District in Corona del Mar is 1.05.
- B-3. The lack of alley access results in a 10-foot rear setback that is intended for larger-sized lots and is not required for the typical lot throughout Corona del Mar. Application of a 10-foot rear setback and 10-foot front setback would equate to approximately 33.9 percent of the lot depth as a required setback. In comparison, application of the standard 10-foot front setback and 5-foot rear alley setback on the typical lot in the vicinity would equate to 12.7 percent of the lot depth.
- B-4. Strict application of the third floor limitations would limit the third floor area to 20 percent of the buildable area (187 square feet), and would require the third floor to be set back an additional 15 feet from the front setback line. The application of the standard third floor area location requirements would allow a 9-foot by 24-foot area in which to construct a third floor. A nearby typical lot with a 10-foot front setback and 5-foot alley setback would have an area of 73 feet by 24 feet in which to construct a third floor with a maximum third floor area of 494 square feet.

Finding:

*C. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

- C-1. The application of the 10-foot rear setback is unusually large and not typical of other lots in Corona del Mar and it significantly limits the buildable depth of the lot. The proposed encroachment into the rear setback is reasonable in this case due to the extremely short depth of the lot and affords the property owner a more usable buildable area and lot depth.
- C-2. The requested variance to exceed the 1.5 floor area limit with a single-unit dwelling that has a gross floor area of 1,848 square feet results in a 1.04 FAR, which is more consistent with the typical lots within the vicinity and allows the property owner the right to construct a dwelling with a similar FAR to other dwellings in Corona del Mar.
- C-3. The application of the third floor area limitations prevents the construction of a usable third floor area. Due to the short depth of the lot, the additional third floor setback requirements are not consistent with the intent of the Zoning Code as it results in an area that is 9 feet by 24 feet in which to construct the third floor and limits the size to 187 square feet in area.

Finding:

*D. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

Facts in Support of Finding:

- D-1. The proposed 5-foot rear setback does not result in a special privilege because it is consistent with the standard 5-foot alley setback and is compatible with the 4-foot side setback on the abutting property and with other dwellings in the area that maintain 3-foot side setbacks.
- D-2. The FAR is a method to compare the maximum square footage allowed on a site based on the lot size. Using an FAR comparison to determine the appropriate maximum square footage allowed on a site provides equity for sub-standard lots without granting special privilege. The proposed gross floor area results in an FAR of 1.04, which is less than the 1.05 FAR of typical lots in the area with a 10-foot front setback, ensuring that the increased floor area does not result in a special privilege not enjoyed by other property owners in the vicinity.
- D-3. The proposed deviations from third floor area limitations do not result in a special privilege because the limitations are based on the buildable area, which is proportionately smaller compared with the typical lots in the area. The first floor is partially below grade, so the third floor is not a typical third floor area and it is designed with a flat roof under the 24-foot height limit. Most third floors are constructed with a pitched roof built to the 29-foot pitched roof height limit.

Finding:

*E. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

Facts in Support of Finding:

- E-1. The proposed dwelling would provide adequate setbacks consistent with the neighborhood pattern of development and would ensure the protection of air, light, and separation that exists with other properties in the vicinity.
- E-2. The size of the proposed dwelling is proportionate to the other dwellings within the immediate neighborhood and throughout Corona del Mar.
- E-3. The design of the structure includes articulation and modulation through the use of several decks and windows to minimize bulk and enhance the aesthetics of the structure.

- E-4. The required two-car parking would be provided in a tandem garage.
- E-5. The property is located on a corner, which provides street access on two sides for emergency access.

Finding:

*F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

- F-1. The intent of a rear setback is to provide adequate separation for light, air, and usable outdoor living space adjacent to other residential properties. However, in Corona del Mar, most properties abut an alley and do not have usable rear yards, but instead utilize their front yards for outdoor living space. The proposed 5-foot rear setback is consistent with the standard 4-foot side setback on the abutting property and other dwellings in the area that maintain 3-foot side setbacks. The proposed design maintains the required 10-foot front setback providing for usable outdoor living space consistent with the other properties in the vicinity, in addition to the two balconies and roof deck.
- F-2. The intent of floor area limits is to ensure each residential structure can be developed with a reasonable sized dwelling in relationship to the lot size and setbacks; however, in this case, utilizing the FAL disproportionately reduces buildable area on this site due to the sub-standard lot size and larger rear setback requirement. Allowing additional floor area above the allowed FAL, would allow for the construction of a reasonable sized dwelling that remains consistent with the development of other dwellings in the vicinity.
- F-3. Due to the short depth of the lot, the additional third floor setback requirements are not consistent with the intent of the Zoning Code. The request to deviate from the third floor limitations is reasonable and justified due to the depth and size of the lot and the design of the proposed structure.
- F-4. The proposed project meets all other required code requirements, including parking, height, and open volume.
- F-5. The requested Variance is consistent with the intent of Zoning Code and General Plan because the proposed deviations from the Zoning Code allow for a single-unit dwelling with a comparable FAR to other properties in the vicinity. The design provides usable open volume area and articulation and modulation so that the bulk is consistent with other properties in the area.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby approves Variance No. VA2012-006 as described in Section 1, and hereby approves a single-unit dwelling with a two-car garage, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 6<sup>TH</sup> DAY OF DECEMBER, 2012.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Michael Toerge, Chairman

BY: \_\_\_\_\_  
Fred Ameri, Secretary

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval, except as modified by applicable conditions of approval.
2. Variance No. VA2012-006 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. Prior to issuance of building permits, approval from the California Coastal Commission shall be required.
5. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
6. ~~The proposed structure shall be limited to a maximum encroachment of 5 feet into the rear 10-foot setback, with the exception of decorative architectural features and roof overhangs which may encroach as allowed in the Zoning Code.~~ DELETED.
7. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code, including the glass railing, projections, stairway, and automatic fire sprinkler system requirements.
8. All improvements shall be constructed as required by ordinance and the Public Works Department.
9. All damaged or broken concrete curb, gutter, and sidewalk along Goldenrod Avenue and Bayview Drive shall be reconstructed.
10. The existing curb access ramp at the corner of Goldenrod Avenue and Bayview Drive shall be upgraded to be ADA compliant.
11. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development shall be removed. All brick carriage walks, planter walls, decorative stones, and stair risers along Goldenrod Avenue and Bayview Drive are considered non-standard improvements.



12. The existing sewer cleanout shall be upgraded per STD-406-L within the public right-of-way if constructed with substandard material. Replacement shall be determined by a City Public Works Inspector.
13. An encroachment permit is required for all work activities within the public right-of-way.
14. All improvements shall comply with the City's sight distance requirements (City Standard 110-L).
15. Landscaping within the sight distance triangle shall be a maximum height of 24 inches. Landscaping within 24 inches from the curb face shall be low growing ground cover. Landscaping within the public right-of-ways shall be limited to a maximum height of 36 inches.
16. The existing street tree along Goldenrod Avenue shall be protected in place. Unauthorized tree removal will trigger substantial penalties for all of the parties involved.
17. Pursuant to Chapter 13 of the Municipal Code, one (1) 36 inch box Maytenus boaria (Mayten Tree) street tree shall be planted along the Bayview Drive frontage per City Standard 118-L-B.
18. The existing 4 inch outlet drain shall be plugged. If an overflow outlet is required, a new curb drain shall be installed per City Standard 184-L.
19. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way shall be required at the discretion of the Public Works Inspector.
20. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Variance No. VA2012-006. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.